

**C.P. v. Blue Cross Blue Shield of Illinois  
USDC (W.D. Wash.), No. 3:20-cv-06145-RJB**

**CONFIDENTIAL EXHIBIT**

**Filed Under Seal  
Pursuant to Protective Order (Dkt. No. 25)**

**Exhibit 5**

Laura Malec, 30(b) (6)

August 19, 2022

Page 1

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

---

C.P., by and through his parents, )  
Patricia Pritchard and Nolle )  
Pritchard and PATRICIA PRITCHARD, )  
Plaintiffs, )  
vs. ) No. 3:20-cv-06145-RJB  
BLUE CROSS BLUE SHIELD OF )  
ILLINOIS, )  
Defendant. )

---

ZOOM VIDEO DEPOSITION UPON ORAL EXAMINATION  
OF  
LAURA MALEC, 30(b) (6)

9:30 a.m.

August 19, 2022

REPORTED BY: Pat Lessard, CCR #2104

Laura Malec, 30(b) (6)

August 19, 2022

Page 2

1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFFS:

4 MS. ELEANOR HAMBURGER

5 Sirianni, Youtz, Spoonemore & Hamburger

6 3101 Western Avenue, Suite 350

7 Seattle, Washington 98121

8 206.223.0303

9 ele@sylaw.com

10

11 MR. OMAR GONZALEZ-PAGAN, pro hac vice

12 Lamda Legal Defense and Education Fund

13 120 Wall Street, 19th Floor

14 New York, NY 1005

15 212.809.9585

16 ogonzalez-pagan@lambdalegal.org

17

18

19

20

21

22

23

24

25

Laura Malec, 30(b) (6)

August 19, 2022

Page 3

1

2 A P P E A R A N C E S

3

4 FOR THE DEFENDANT:

5 MS. GWENDOLYN PAYTON

6 MS. STEPHANIE BEDARD

7 Kilpatrick Townsend

8 1420 Fifth Avenue, Ste. 3700

9 Seattle, WA 98101

10 206.467.9600

11 gpayton@kilpatricktownsend.com

12

13

14 ALSO PRESENT:

15 MR. TODD ELLMAN

16

17

18

19

20

21

22

23

24

25

Laura Malec, 30(b) (6)

August 19, 2022

Page 4

## 1 E X A M I N A T I O N

2 ATTORNEY PAGE

3 BY MS. HAMBURGER: 7

## 4 E X H I B I T I N D E X

5 No. DESCRIPTION PAGE

6 Exhibit 45 Amended Notice of Continuance of 9  
7 Rule 30(b) (6) Deposition of Blue  
8 Cross Blue Shield of Illinois.9 Exhibit 46 Fifth Supplemental Responses and 18  
10 Objections to Plaintiffs' Second  
11 Discovery Requests.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Laura Malec, 30(b)(6)

August 19, 2022

Page 5

1

## P R O C E E D I N G S

2 THE VIDEOGRAPHER: We are on the record at  
3 9:30 a.m. on August 19th, 2022.

4                   This is the video-recorded deposition of  
5   Blue Cross 30(b)(6) Laura Malec in the matter of CP  
6   by and through his parents, et al., versus Blue Cross  
7   Blue Shield of Illinois, No. 3:20-cv-06145-RJB in the  
8   United States District Court, Western District of  
9   Washington at Tacoma.

10 This deposition is being held virtually and  
11 was noticed by plaintiff.

12 Counsel, please introduce yourselves and  
13 state whom you represent.

14 MS. HAMBURGER: Good morning. My name is  
15 Eleanor Hamburger and I represent the plaintiffs in  
16 this matter.

17 MR. GONZALEZ-PAGAN: Good morning. I'm Omar  
18 Gonzalez-Pagan. I'm from Lambda Legal and I represent  
19 the plaintiffs in this matter

20 MS. PAYTON: Hello. I'm Gwendolyn Payton.  
21 I represent Blue Cross Blue Shield of Illinois

22 MS. BEDARD: Good morning. My name is  
23 Stephanie Beddard and I also represent Blue Cros.  
24 Blue Shield of Illinois

25 MS. PAYTON: Our client, Todd Ellman, is in

Laura Malec, 30(b) (6)

August 19, 2022

Page 6

1 the room with us as well from the legal department.

2 My name is Patrick Norton and I'm the legal  
3 videographer.

4 The court reporter is Pat Lessard. We are  
5 with Seattle Deposition reporters.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Laura Malec, 30(b) (6)

August 19, 2022

Page 22

1 it.

2 Q. All right. And how did Blue Cross  
3 Blue Shield of Illinois identify the denials that it  
4 looked at to evaluate the list?

5 MS. PAYTON: Object to the form of the  
6 question.

7 A. Denial, so it's in our records or we went  
8 back and looked at where a denial was. So we looked  
9 in our systems and did a search on denials with this  
10 type of a category on it.

11 Q. (By Ms. Hamburger) So I'm trying to drill  
12 down on that.

13 Did you look for denials that had a  
14 particular diagnostic code or treatment code? How did  
15 they find the denials?

16 A. It would be a type of denial. I'm not  
17 exactly sure what it's called but is it a, you know, a  
18 gender exclusion or a gender service, you know, type  
19 of a benefit that was then denied.

20 Q. But you don't know how they identified the  
21 denials specifically, is that right?

22 MS. PAYTON: Object to the form.

23 A. I don't do claim denials. That's not a team  
24 that I manage, so I don't want to speak to that.

25 MS. PAYTON: Can we take a five-minute

Laura Malec, 30(b) (6)

August 19, 2022

Page 23

1 break?

2 MS. HAMBURGER: Sure.

3 MS. PAYTON: Okay.

4 THE VIDEOGRAPHER: We're going off the  
5 record at 9:57 a.m.

6 (Recess.)

7 THE VIDEOGRAPHER: One moment, please.

8 We're back on the record at 10:01 a.m.

9 A. So I believe I'm understanding your question  
10 better. If you would reask your question or if we  
11 could reask it then I think I could answer it in a  
12 better way.

13 MS. HAMBURGER: Pat, would you mind reading  
14 it back?

15 THE REPORTER: "Question. But you don't know  
16 how they identified the denials specifically, is that  
17 right?"

18 A. I do understand the analysis that was done.  
19 Our legal team went in and looked at anything with a  
20 gender dysphoria diagnosis.

21 And what were they doing was looking at  
22 anything there that had been denied based on exclusion  
23 in a plan.

24 And they did the matching of those and went  
25 in and looked at, you know, matched the denial back to

Laura Malec, 30(b) (6)

August 19, 2022

Page 24

1 the plan to make sure that there had been an exclusion  
2 in the plan and we had actually denied that properly.

3 Q. (By Ms. Hamburger) Okay. So they looked at  
4 denials of services that had a gender dysphoria  
5 diagnosis, is that right?

6 A. Yes.

7 Q. All right. And did this review that was  
8 done, it covered only Blue Cross Blue Shield of  
9 Illinois administered self-funded plans, is that  
10 right?

11 A. Yes.

12 Q. And it reviewed plans regardless of the  
13 specific geographic location of the members?

14 A. Yes.

15 Q. Okay. Is it fair to say that most of those  
16 plans were located in the state of Illinois?

17 A. The plans would be, I believe the term would  
18 be sited out of Illinois.

19 Q. Okay. But their employees could be located  
20 anywhere, is that right?

21 A. Yes.

22 Q. Okay. And indeed some of the employees are  
23 located across the country, is that right?

24 A. Sure.

25 Q. Blue Cross Blue Shield of Illinois would

Laura Malec, 30(b) (6)

August 19, 2022

Page 25

1 administer plans with members beyond the state line of  
2 Illinois, is that right?

3 A. Yes.

4 Q. I want to turn to the first topic 1.a. in  
5 the deposition notice. And that asks for the number  
6 of self-funded ERISA plans administered by Blue Cross  
7 Blue Shield of Illinois that contain gender affirming  
8 care exclusions that have the language that is the  
9 same or similar to the exclusions listed in  
10 Addendum A.

11 Do you see that?

12 A. I do.

13 Q. Okay. And I have numbered Exhibit 46, which  
14 is the Addendum A, numbering from page 13, the very  
15 first exclusion, numbering them -- I think it's one  
16 through 18 or something.

17 And I can put my copy up on the screen or we  
18 could -- I understand your counsel may have  
19 handwritten the numbers in.

20 A. Yes.

21 Q. Which is easier for you? Should I put it on  
22 the screen or are you just going to read off the  
23 handwritten copy that you have?

24 A. The copy I have is fine.

25 Q. Okay. So the first one it says "Effective

Laura Malec, 30(b) (6)

August 19, 2022

Page 26

1 Date 1/01/2017," and it says "Gender reassignment  
2 Surgery (also referred to as transsexual Surgery, sex  
3 reassignment Surgery or intersex Surgery) including  
4 related services and supplies."

5 Do you see that?

6 A. I do.

7 Q. Okay. And does that reflect one kind of  
8 exclusion that appears in the self-funded group health  
9 plans administered by Blue Cross Blue Shield of  
10 Illinois?

11 A. Yes.

12 Q. Okay. And how many plans have that  
13 language?

14 A. 378.

15 Q. Okay. Now previously we had been told that  
16 number one was the standard language when a Blue Cross  
17 Blue Shield of Illinois plan -- standard language that  
18 Blue Cross Blue Shield of Illinois offers to employers  
19 when they want a gender affirming care exclusion.

20 Is that your understanding?

21 A. It is.

22 Q. So let's turn to number two. This one is  
23 dated 1/1/2019.

24 Do you see that?

25 A. I do.

Laura Malec, 30(b) (6)

August 19, 2022

Page 27

1 Q. I'm not going to read it because it's too  
2 long.

3 But how many plans have number two?

4 A. One.

5 Q. Okay. Let's turn to number three. That one  
6 is dated 1/01/2020.

7 How many plans have that one?

8 A. One. For each of the next, if I may, two  
9 through 17 are each represented uniquely in one plan.

10 Q. Okay. Thank you. And what about 18 and 19?

11 A. I didn't see them on the back. They are  
12 uniquely identified as well.

13 Q. Okay.

14 A. So through 19 are uniquely identified as one  
15 plan as well.

16 Q. Okay. And then on 18, if you could take a  
17 look at it, it uses an abbreviation FFL in three  
18 places.

19 Do you know what that refers to?

20 A. I do not but I'm happy to follow up.

21 Q. Okay. Thank you. I appreciate that.

22 And does this Addendum A represent the  
23 universe of Blue Cross Blue Shield of Illinois ERISA  
24 self-funded plans that have gender affirming care  
25 exclusions to the best of Blue Cross Blue Shield of

Laura Malec, 30(b) (6)

August 19, 2022

Page 35

1 going to stop making the objection.

2 Go ahead and answer.

3 A. Can you just repeat the question then?

4 Q. (By Ms. Hamburger) In the plans that  
5 include gender affirming care that are identified in  
6 Addendum A do those plans generally cover hormone  
7 therapy for other conditions than gender affirming --  
8 than gender dysphoria when medically necessary?

9 A. Yes.

10 Q. In those plans that exclude gender affirming  
11 care in Addendum A, do those plans generally cover  
12 hysterectomies when medically necessary for conditions  
13 other than gender dysphoria?

14 A. Yes.

15 Q. In those plans that exclude gender affirming  
16 care in Addendum A, do those plans generally cover  
17 chest reconstruction surgery for conditions other than  
18 gender dysphoria when medically necessary?

19 A. Yes.

20 Q. How does Blue Cross Blue Shield know when to  
21 cover a mastectomy in one of the plans identified in  
22 Addendum A and when to exclude it?

23 MS. PAYTON: Object to the form. Way  
24 outside the scope.

25 A. We match the plan design which is done by

Laura Malec, 30(b) (6)

August 19, 2022

Page 36

1 the self-funded group with any claims coming in. And  
2 if there's not an exclusion and it's medically  
3 necessary we refer to our medical policy and process  
4 claims or approvals in that way.

5 Q. (By Ms. Hamburger) Okay. I want to just  
6 drill down on this a bit more.

7 The analysis that's done by Blue Cross  
8 Blue Shield to know when to cover a mastectomy and  
9 when to exclude it, in those plans that have a  
10 gender affirming care exclusion, is it based on a  
11 diagnostic code of gender dysphoria, is that right?

12 MS. PAYTON: Object to the form. Scope.

13 A. I'm not sure. I don't remember or I don't  
14 know that.

15 Q. (By Ms. Hamburger) Well, you testified  
16 earlier that the way, the methodology that Blue Cross  
17 Blue Shield of Illinois used to identify denials that  
18 relate to gender affirming care was based on a  
19 diagnosis in the claim with gender dysphoria, is that  
20 right?

21 A. Yes.

22 Q. And so it would be the same way in the  
23 claims processing, would it not?

24 A. Yes.

25 MS. PAYTON: I'm going to object to the form

Laura Malec, 30(b) (6)

August 19, 2022

Page 37

1 and scope.

2 Q. (By Ms. Hamburger) Blue Cross Blue Shield  
3 of Illinois would know when to cover a mastectomy and  
4 when to exclude it in a plan that has gender affirming  
5 care exclusions based upon a diagnosis code of gender  
6 dysphoria, is that right?

7 MS. PAYTON: Object to the form, scope.

8 A. I'm not sure.

9 Q. (By Ms. Hamburger) If a plan that excludes  
10 gender affirming care covers mastectomies, and a claim  
11 comes in for a mastectomy, how would Blue Cross  
12 Blue Shield know whether it is a covered mastectomy or  
13 an excluded mastectomy?

14 MS. PAYTON: Object to the form, scope.

15 A. I imagine it's in the diagnostic code, I'm  
16 sure.

17 Q. (By Ms. Hamburger) Okay. So if it has a  
18 diagnostic code of gender dysphoria it would be  
19 excluded under the gender affirming care exclusion, is  
20 that right?

21 MS. PAYTON: Object to the form, scope.

22 A. I'm not sure.

23 Q. (By Ms. Hamburger) Why wouldn't it be?

24 MS. PAYTON: The same objection.

25 These are questions for a medical

Laura Malec, 30(b) (6)

August 19, 2022

Page 40

1 MS. PAYTON: Object to the form.

2 A. I don't know what happened when the denials  
3 happened.

4 Q. (By Ms. Hamburger) I believe you testified  
5 earlier that the denials that Blue Cross Blue Shield  
6 of Illinois pulled to determine which plans had  
7 gender-affirming exclusions all had a diagnostic code  
8 of gender dysphoria, is that right?

9 A. Yes. We did do that pull and that's how we  
10 got to our lists.

11 Q. Okay. And turning again to 1.f., which  
12 again asks for under what conditions each of the  
13 self-funded plans cover the same or similar treatment  
14 when medically necessary for other conditions.

15 Do you see that question in 1.f.?

16 A. Yes.

17 Q. Okay. Is the condition that triggers the  
18 application of the gender affirming care exclusion  
19 gender dysphoria?

20 MS. PAYTON: Object to the form. Asked and  
21 answered, scope.

22 A. Yes.

23 MS. HAMBURGER: Okay. I'm going to take a  
24 five-minute break.

25 MS. PAYTON: Okay.